

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KINAGA LAMAR TILLIS,

Petitioner,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,

Respondent.

No. 2:23-cv-2131 CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, with a request for leave to proceed in forma pauperis. Examination of the in forma pauperis application reveals that petitioner is unable to afford the costs of suit. Accordingly, the application to proceed in forma pauperis will be granted. See 28 U.S.C. § 1915(a).

Under Rule 4 of the Rules Governing Section 2254 Cases, the court must review all petitions for writ of habeas corpus and summarily dismiss any petition if it is plain that the petitioner is not entitled to relief. The court has conducted that review.

The court may entertain a petition for a writ of habeas corpus only on the basis that the petitioner is in custody in violation of federal law. 28 U.S.C. § 2254. In ground one of his petition, petitioner asserts that he applied for re-sentencing in the Superior Court of Sutter County and his request was denied. Petitioner asserts that by not reducing his sentence, the court violated

1 California law. There is no allegation or suggestion that the court violated any aspect of federal
2 law. Therefore, petitioner cannot obtain relief on ground one.

3 In ground two, petitioner asserts that he was denied counsel at the resentencing
4 proceeding and the appeal of that proceeding. This also does not state a claim upon which relief
5 can be granted as, generally, a petitioner does not have a right to counsel in state court collateral
6 proceedings, Pennsylvania v. Finley, 481 U.S.551, 555 (1987), and petitioner fails to point to any
7 basis for the court deviating from that rule here.

8 For these reasons, the court will recommend that petitioner's petition for writ of habeas
9 corpus be summarily dismissed. The court notes that in his petition, petitioner asks that he be
10 appointed counsel. ECF No. 1 at 9. Title 18 U.S.C. § 3006A authorizes the appointment of
11 counsel at any stage of a habeas case "if the interests of justice so require." See Rule 8(c), Fed.
12 R. Governing § 2254 Cases. In the present case, the court does not find that the interests of
13 justice would be served by the appointment of counsel.

14 Accordingly, IT IS HERBY ORDERED that:

- 15 1. Petitioner's request for leave to proceed in forma pauperis (ECF No. 2) is granted;
- 16 2. Petitioner's request for the appointment of counsel is denied; and
- 17 3. The Clerk of the Court assign a district court judge to this case.

18 IT IS HEREBY RECOMMENDED that petitioner's petition for a writ of habeas corpus
19 be summarily dismissed.

20 These findings and recommendations are submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
22 after being served with these findings and recommendations, petitioner may file written
23 objections with the court. Such a document should be captioned "Objections to Magistrate
24 Judge's Findings and Recommendations." In his objections petitioner may address whether a
25 certificate of appealability should issue in the event he files an appeal of the judgment in this
26 case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district court must issue or
27 deny a certificate of appealability when it enters a final order adverse to the applicant). Where, as
28 here, a habeas petition is dismissed on procedural grounds, a certificate of appealability "should

1 issue if the prisoner can show: (1) ‘that jurists of reason would find it debatable whether the
2 district court was correct in its procedural ruling;’ and (2) ‘that jurists of reason would find it
3 debatable whether the petition states a valid claim of the denial of a constitutional right.’” Morris
4 v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484
5 (2000)). Any response to the objections shall be served and filed within fourteen days after
6 service of the objections. The parties are advised that failure to file objections within the
7 specified time may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951
8 F.2d 1153 (9th Cir. 1991).

9 Dated: October 12, 2023



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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